

## TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 920, “State Transit Assistance,” Chapter 921, “Advanced Allocations of State Transit Assistance Funding,” and Chapter 924, “Public Transit Infrastructure Grant Program,” Iowa Administrative Code.

The proposed amendments to Chapter 920 update the general information and definitions, align special project purposes with current goals for passenger transportation outreach and coordination, and remove restrictive project guidelines to allow more flexibility in expenditure of funds. Other proposed amendments to Chapter 920 make changes to the items not eligible for assistance by removing from the list expenses related to heavy rail transit service, including planning, capital, or operations, to allow public transit agencies to think more broadly in terms of their public transit offerings, if appropriate; remove the qualifier of reserving \$300,000 of state transit assistance for special projects only when the year’s receipts are expected to equal or be greater than \$500,000 because annual appropriations now top \$14 million; and add a new subrule concerning allowing advance payment of monthly advance allocations of formula project funding to Iowa’s public transit systems. In the appendix, the formula is unchanged, but the definition of programmed eligibility (PE) is stricken and the definition of formula percentage (FP) is added to clarify that the transit systems receive this funding based on past performance statistics entered into a formula and not based on individual projects programmed for consideration by the Department.

The proposed amendments to Chapter 921 update the scope of the chapter and the office contact information and change the distribution of state transit assistance from quarterly to monthly. The calculation of available state transit assistance funding is based on the previous month’s sales of motor vehicles and vehicle-related equipment; the amount varies month to month based on actual sales. The funds are distributed to the Department on a monthly basis; therefore, a quarterly advance to a public transit system would be based on sales projections rather than on actual sales. Also, on occasion, the Office of Public Transit must withhold state transit assistance funds from a transit agency until a late report is submitted. The funds are released once the reporting is current. Chapter 921 allows the advancement of quarterly state transit assistance funds to transit agencies upon request. If that request were granted, the ability to withhold the funds to encourage timely reporting would diminish.

The proposed amendments to Chapter 924 amend the definition of “vertical infrastructure,” update the office contact information, require project justification within the application, remove the requirement that the Department review the applications with an industry advisory committee since many of the potential committee members would themselves be representing public transit system applicants, and add a new subrule which states that the transit system must retain ownership of the new, renovated or repaired structure or facility for its useful life and requires that a prorated repayment be made to the Department if the structure or facility is sold or transferred prior to useful life expiration.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us).

5. Be received by the Department's rules administrator no later than May 16, 2017.

A meeting to hear requested oral presentations is scheduled for Friday, May 19, 2017, at 10 a.m. in the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 324A.

The following amendments are proposed.

ITEM 1. Amend subrule 920.1(1) as follows:

**920.1(1)** Development, maintenance and improvement of transit services for the general public and for transportation disadvantaged persons, ~~as defined in Iowa Code section 324A.1.~~

ITEM 2. Amend rule 761—920.2(324A) as follows:

**761—920.2(324A) General information.** The department shall ~~send~~ post annually to ~~each public transit system in Iowa~~ the required forms and instructions for applying for state transit assistance to the department's Web site at [www.iowadot.gov](http://www.iowadot.gov) and notify each public transit system in Iowa of the availability. Requests for assistance and questions about application preparation should be directed to: Office of Public Transportation Transit, Air and Transit Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870.

ITEM 3. Rescind rule 761—920.3(324A) and adopt the following new rule in lieu thereof:

**761—920.3(324A) Definitions.** The definitions in Iowa Code section 324A.1 apply to this chapter. In addition:

*"Formula assistance"* means state transit assistance appropriations minus funds reserved for special projects.

*"Joint participation agreement"* means a contract between the department and a public transit system for either operations or capital assistance needed for implementation of a transit service project or projects. Each agreement shall include, but not be limited to, a project budget, method of payment, and period of performance.

*"Project"* means a concerted set of actions that will develop, maintain, or improve one or more elements of the public transit system's service.

ITEM 4. Amend rule 761—920.4(324A) as follows:

**761—920.4(324A) Types of projects.**

**920.4(1) *Programmed Formula projects.*** A ~~programmed~~ formula project may involve operations assistance, capital assistance, ~~or both planning, or any combination of the three.~~ These projects are developed, analyzed and ranked through the transit planning process which involves the following steps:

a. No change.

b. Each public transit system shall submit its ranked list of proposed projects to the ~~air and transit division~~ department.

**920.4(2) *Special projects.***

a. Special projects are extraordinary, emergency or innovative in nature, and may include, but are not limited to, the following purposes:

(1) No change.

(2) ~~Improving the performance or fiscal viability of the transit system~~ Increasing the public's awareness and understanding of transit.

(3) and (4) No change.

- (5) Increasing the cooperation and coordination between private and public sectors.
- ~~(6) Providing incentives for increased commitment of private or public support.~~
- ~~(7) (6) Developing, demonstrating, or refining some a technical, procedural, or mechanical innovation so that it may be successfully employed utilized by other public transit systems in Iowa.~~
- ~~(8) (7) Responding to an emergency situation that places an extraordinary and unforeseen strain on the resources of a public transit system.~~
- b. Proposals for special projects may be submitted to the ~~air and transit division~~ department at any time. However, ~~because of limited funding, special projects should be submitted with the programmed projects, if possible.~~
- c. ~~A special project may either involve assistance to an individual public transit system or to several systems as a group.~~

ITEM 5. Amend rule 761—920.5(324A) as follows:

**761—920.5(324A) Standards for projects.**

**920.5(1) Requirements for transit system.** A public transit system is eligible for project assistance if the system is in compliance with all of the following criteria:

- a. ~~It uses a centralized accounting system that maintains primary documentation for all revenues and expenses~~ The transit system abides by all applicable state and federal laws and regulations.
- b. ~~One person is responsible for managing the assets, operations and funding of the system~~ The transit system maintains primary documentation for all revenues and expenses for a period of at least three years.
- c. ~~It maintains its~~ The transit system maintains the system's policies, routes, schedules, fare structure, and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation, and fiscal solvency.
- d. ~~It has received~~ The transit system received departmental approval of its the system's plan or schedule for repayment of any loan administered by the department.
- e. The transit system accurately reports all services to be supported with project formula assistance and ensures that all services are open to the general public.

**920.5(2) Project conditions.** The department shall obligate state transit assistance for joint projects that meet the following criteria:

- a. ~~Each special project shall have a preestablished basis for determining success using a specified means of performance measurement, and a detailed budget of the resources available and the assistance necessary for implementation must be included in the current year of the locally adopted transportation improvement program.~~
- b. ~~Each project shall contain payment criteria, through the joint participation agreement, which are mutually agreed upon by the department and the contracting officer of the transit system.~~
- c. ~~A project may involve either capital assistance or operations assistance but a separate joint participation agreement is required for each type of assistance funded~~ Each special project shall have a preestablished basis for determining success using a specified means of performance management and shall have a detailed budget of the resources available and the assistance necessary for implementation.
- d. ~~State assistance for a special project involving capital expense shall not exceed 43.3 85 percent of the project's total capital expense. State assistance for a special project involving operating support shall not exceed 50 80 percent of the project's total operating expense in the first year and 50 percent of the project's total operating expense in the second year. In special or emergency situations, these requirements may be waived by the director of the air and transit division to permit a fiscal year maximum of \$5000 for any one system.~~

**920.5(3) Items not eligible for assistance.**

- a. ~~Any expense related to heavy rail transit service, including planning, capital, or operations.~~
- b. a. Administrative, operations, or capital expense expenses which is are determined by the department to be inconsistent with department policies, public law, officially approved planning and programming documents, or inconsistent with the purpose of improving the effectiveness and quality of transit services.

~~e. b.~~ Development of managerial, administrative, or operational systems which duplicate programs made available at no charge to the transit system by the department.

**920.5(4) *Determination of system eligibility for ~~programmed project~~ formula assistance.***

~~a.~~ Prior to the beginning of each fiscal year, each state-designated public transit system's ~~programmed eligibility formula percentage~~ shall be determined through the process shown in the appendix located at the end of this chapter ~~of rules and included as part of this chapter.~~

(1) Transit system data used in determining ~~programmed eligibility formula percentage~~ is based only on services which are open to the general public and is derived from the last fiscal year for which complete information is available.

(2) No change.

~~b.~~ If a known dollar amount of state transit assistance has been appropriated for the fiscal year, ~~the~~ The amount of each system's eligibility for ~~programmed project~~ formula assistance from this appropriation shall be determined by multiplying the system's ~~programmed eligibility formula percentage~~ by the amount of the appropriation not reserved for special projects.

~~c.~~ If the dollar amount of state transit assistance is not known until the funds are actually deposited in the state transit assistance fund account, the amount of each system's eligibility for ~~programmed project~~ formula assistance from these funds shall be determined as follows: At the beginning of each ~~fiscal quarter~~ month, the system's ~~programmed eligibility formula percentage~~ shall be multiplied by the amount of new funds not reserved for special projects that were deposited in the state transit assistance fund account during the previous ~~quarter~~ month.

~~d.~~ No change.

**920.5(5) *Determination of amount reserved for special projects.*** Each fiscal year, ~~up to at least~~ \$300,000 may will be reserved from state transit assistance appropriations for special projects ~~if the appropriations for the year are expected to equal or exceed \$500,000.~~ Any special project funds not obligated in the previous fiscal year and any funds made available through closeout of previously approved projects may also be reserved for special projects. Special project funds are distributed by the department on a discretionary basis in accordance with subrule 920.4(2) ~~of this chapter.~~

ITEM 6. Amend rule 761—920.6(324A) as follows:

**761—920.6(324A) Processing.**

**920.6(1) *Review.*** ~~The department, through its air and transit division and planning and research division,~~ shall review the proposed projects.

**920.6(2) *Program.*** Based on available funds and the project priorities established by the transit systems, the ~~air and transit division~~ department shall prepare a list of ~~both programmed and special projects recommended for funding approval~~ set of funding recommendations.

**920.6(3) *Approval.*** ~~The air and transit division shall submit the list to the transportation commission for approval.~~

**920.6(4) ~~920.6(3)~~ *Agreement Approval and agreement.*** Upon approval of the projects by the transportation commission, the ~~air and transit division~~ department shall prepare a joint participation agreement and send it to the each public transit system for signing execution. ~~The agreement shall be returned to the air and transit division for signing by the department.~~

**920.6(4) *Advance payment allowed.*** Each transit system with a signed joint participation agreement may be paid formula assistance monthly, in advance of project expenditures, if all of the following conditions are met:

a. The transit system included in its application a request for advance allocations as set forth in Iowa Code section 324A.6.

b. The transit system is current on all reporting required by the department.

c. The transit system is current on all scheduled repayments under loan contracts from the department.

ITEM 7. Amend **761—Chapter 920**, implementation sentence, as follows:

Rules 920.1(324A) to 920.6(324A) These rules are intended to implement Iowa Code chapter 324A.

ITEM 8. Amend **761—Chapter 920**, appendix, as follows:

APPENDIX TO  
761—920.5(324A)

<u>FP</u>	<u>Formula percentage. The percentage of any state transit assistance appropriation that a public transit system is eligible to receive from the nondiscretionary portion of the appropriation. Determination of a public transit system's formula percentage shall be made using the method diagrammed in this appendix.</u>
FY	Fiscal year. The 12-month period beginning July 1 of one year and ending June 30 of the following year.
LDI	Locally determined income. All transit system revenue dedicated for operations expense during a fiscal year, minus federal operating assistance from the U.S. Department of Transportation and minus all special project operating support and <del>programmed-eligibility formula assistance</del> funds received from the Iowa Department of Transportation.
OpExp	Operations expense. All eligible transit system expenses related to operating, maintaining, and administering transit operations.
Pass	Passenger. A person boarding a transit vehicle for the purpose of making a trip. A passenger is counted each time a that person boards a vehicle, <del>even though the person may be on the same journey from origin to</del> <u>for travel to a destination.</u>
PE	<del>Programmed eligibility. The percentage of any state transit assistance appropriation that a public transit system is eligible to receive from the nondiscretionary portion of the appropriation. Determination of a public transit system's "programmed eligibility" shall be made using the method diagrammed in this appendix.</del>  <del>System programmed eligibility is reduced by 25 percent for each quarter of any fiscal year in which no joint participation agreement with the department has been executed. The director of the air and transit division may waive this reduction.</del>
RevMi	Revenue Miles <u>miles</u> . Total vehicle miles traveled by revenue vehicles of public transit systems <u>while</u> in revenue service. Excludes miles traveled to and from storage facilities and other deadhead travel.

ITEM 9. Amend **761—Chapter 920**, second appendix, title, as follows:

FORMULA FOR DETERMINATION OF ~~PROGRAMMED-ELIGIBILITY~~ FORMULA  
PERCENTAGE

ITEM 10. Amend **761—Chapter 920**, second appendix, to change the acronym "PE" to "FP."

ITEM 11. Amend rule 761—921.1(324A) as follows:

**761—921.1(324A) Scope of chapter.** This chapter shall apply only to those transit systems eligible for and having or proposing to have a ~~"Joint Participation Agreement"~~ joint participation agreement in force with the ~~Iowa department of transportation~~ for state transit assistance funding as set forth in ~~rules 761—Chapter 920~~. This chapter implements provisions for advance allocations of state transit assistance funding as set forth in Iowa Code ~~subsection 324A.6(5)~~ section 324A.6(4). The definitions in Iowa Code section 324A.1 apply to this chapter. The requirements for the award of state funds for state transit assistance and subsequent procedures are found in ~~rules 761—Chapter 920~~.

ITEM 12. Amend rule 761—921.2(324A) as follows:

**761—921.2(324A) Basic types of advance Advance allocations.** Advance allocations of state transit assistance are paid prior to the time actual expenditures are incurred. ~~Three basic types of advance allocations shall be available:~~

**921.2(1)** Payment of ~~one-fourth~~ one-twelfth (or ~~25~~ 8.33 percent) of the total “~~Joint Participation Agreement~~” joint participation agreement amount ~~is made prior to or during each fiscal quarter~~ month, starting on the execution date of the “~~Joint Participation Agreement~~” joint participation agreement.

**921.2(2)** Payment of an amount to be denoted in the “~~Joint Participation Agreement~~” joint participation agreement prior to or during each fiscal quarter, starting on the execution date of the “~~Joint Participation Agreement~~” joint participation agreement.”

**921.2(3)** Payment of the total “~~Joint Participation Agreement~~” joint participation agreement amount prior to or during the project period, starting on the execution date of the “~~Joint Participation Agreement~~” joint participation agreement.”

ITEM 13. Amend rule 761—921.3(324A) as follows:

**761—921.3(324A) Application for advance allocations.**

**921.3(1)** Transit systems having or proposing to have a “~~Joint Participation Agreement~~” joint participation agreement with the department for state transit assistance funding may make written application for advance allocations of the “~~Joint Participation Agreement~~” joint participation agreement amount. The application shall be directed to: Office of Public Transportation, Air and Transit Division Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870. Applications are available on the department’s Web site at [www.iowadot.gov](http://www.iowadot.gov) or by telephone at (515)233-7870.

**921.3(2)** Transit systems applying for state transit assistance funding, pursuant to 761—Chapter 920, may make written application for advance allocations of a proposed or existing “~~Joint Participation Agreement~~” joint participation agreement amount as part of the application for state transit assistance.

**921.3(3)** No application for advance allocation shall be complete without:

a. and b. No change.

c. A statement from the transit system which indicates the specific existing or proposed “~~Joint Participation Agreement~~” joint participation agreement from which advance allocations are to be derived.

d. and e. No change.

f. ~~If varied advance allocations per quarter are requested pursuant to subrule 921.2(2), the following shall also be included in the application:~~

(1) A statement denoting the proposed advance allocations for each quarter, including the dollar amounts and the percentage of each quarter’s proposed advance allocation to the total “~~Joint Participation Agreement~~” joint participation agreement amount.

(2) A statement of justification for the varied allocation amounts requested.

(3) A detailed transit system cash flow analysis projected for the performance period of the “~~Joint Participation Agreement~~” joint participation agreement.”

**921.3(4)** Rescinded, effective April 16, 1986.

ITEM 14. Amend rule 761—921.4(324A) as follows:

**761—921.4(324A) Application approval.** The ~~air and transit division of the Iowa department of transportation~~ shall review all applications for advance allocations of state transit assistance. ~~It~~ The department shall also approve, disapprove or defer all such applications. Provisions of applications which are approved shall be written into and made a part of the transit system’s state transit assistance “~~Joint Participation Agreement~~” joint participation agreement, if it is in effect, or written into such “~~Joint Participation Agreement~~” joint participation agreement when awarded by the department pursuant to rules 761—Chapter 920. The transit system shall be so notified of such action. Transit systems whose applications for advance allocations are disapproved or deferred shall be so notified by the department, including the reason(s) for such actions.

ITEM 15. Amend rule 761—921.5(324A) as follows:

**761—921.5(324A) Consideration in determining the approval of advance allocation application.** The ~~air and transit division~~ department shall give consideration to the following items in determining the approval, disapproval or deferment of advance allocation applications:

**921.5(1)** No change.

**921.5(2)** Previous experience of the ~~air and transit division~~ department in dealing with the transit system making application including but not limited to the following:

a. Timeliness of contract and application materials, as assessed by the ~~air and transit division~~ department.

b. Fiscal management capability of the transit system, as assessed by the ~~air and transit division~~ department.

ITEM 16. Amend rule 761—921.7(324A) as follows:

**761—921.7(324A) Reports, and suspension and termination of allocations.**

**921.7(1)** Transit systems receiving advance allocations shall provide quarterly and end-of-the-year financial and statistical reports to the ~~air and transit division~~ department in the manner and within the time limits described in the state transit assistance ~~“Joint Participation Agreements.”~~ joint participation agreements. These reports shall be made ~~on forms prescribed for that purpose and through an online portal furnished to the transit systems by the~~ air and transit division department.

**921.7(2)** Failure to file quarterly and end-of-the-year financial and statistical reports by any transit system with the ~~air and transit division~~ department in the manner and within the time limits described in the state transit assistance ~~“Joint Participation Agreement”~~ joint participation agreement shall be cause for suspension or termination of those provisions of the ~~“Joint Participation Agreement,”~~ joint participation agreement, and therefore, suspension or termination of advance allocation payments made by the Iowa department of transportation. The ~~air and transit division~~ department shall notify any transit system of such actions.

**921.7(3)** Payment of eligible ~~“Joint Participation Agreement”~~ joint participation agreement expenses to a transit system that has had advance allocation contract provisions suspended or terminated by the ~~air and transit division~~ department shall be by the method of reimbursement payments as described in the state transit assistance ~~“Joint Participation Agreements.”~~ joint participation agreements.

ITEM 17. Amend rule 761—921.9(324A) as follows:

**761—921.9(324A) ~~“Joint Participation Agreement”~~ Joint participation agreement close and audits.**

**921.9(1)** Each transit system receiving advance allocations shall, as part of the end-of-the-year financial and statistical report, calculate the total ~~“Joint Participation Agreement”~~ joint participation agreement amount eligible for payment by the Iowa department of transportation within the limits stated in the ~~“Joint Participation Agreement.”~~ joint participation agreement. This eligible ~~“Joint Participation Agreement”~~ joint participation agreement amount shall be compared to the total amount of the advance allocations for that ~~“Joint Participation Agreement.”~~ joint participation agreement. If the advance allocations’ total is greater than the eligible ~~“Joint Participation Agreement”~~ joint participation agreement amount, the transit system must repay the Iowa department of transportation the difference. After verification of these calculations, the department shall issue to the public transit system an invoice for the amount of the required repayment. Failure to make this repayment shall be grounds for:

a. Termination of other transit assistance ~~“Joint Participation Agreements”~~ joint participation agreements with that transit system,

b. Suspension or termination of further advance allocations made on future ~~“Joint Participation Agreements,”~~ joint participation agreements,

c. Reduction of Iowa department of transportation participation in existing or future ~~“Joint Participation Agreements,”~~ joint participation agreements, or

d. Reducing future ~~“Joint Participation Agreement”~~ joint participation agreement reimbursement requests of the transit system by an amount not to exceed the unpaid debt owed the Iowa department of ~~transportation~~ and crediting the outstanding debt of the project being closed out.

**921.9(2)** The ~~air and transit division~~ department may institute any such action(s) as stated in subrule 921.9(1) above and shall notify any transit system of such action taken against ~~them~~ the transit system.

**921.9(3)** After the repayment and end-of-the-year financial and statistical reports are submitted, or after the ~~air and transit division~~ department has instituted any action(s) for failure to do so, the Iowa department of ~~transportation~~ shall audit the transit system’s books, accounts, records and other material and information necessary to determine ~~“Joint Participation Agreement”~~ joint participation agreement compliance. The advance allocations paid to the transit system shall be taken into consideration and made part of the amount to be audited.

ITEM 18. Amend **761—Chapter 921**, implementation sentence, as follows:

~~Rules 921.1 to 921.9~~ These rules are intended to implement Iowa Code chapter 324A.

ITEM 19. Amend rule **761—924.2(324A)**, definition of “Vertical infrastructure,” as follows:

*“Vertical infrastructure”* ~~is~~ means the same as defined in Iowa Code section 8.57, ~~subsection 6~~ 8.57(5).

ITEM 20. Amend rule **761—924.3(324A)** as follows:

**761—924.3(324A) Information and forms.** Information, instructions, and application forms ~~may be obtained~~ are available from the Office of Public Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone ~~(515)239-1875~~ (515)233-7870; or the department’s Web site at [www.iowadot.gov](http://www.iowadot.gov). ~~Information and forms are also available through the Internet at <http://www.iatransit.com>.~~

ITEM 21. Rescind and reserve rule **761—924.5(324A)**.

ITEM 22. Amend subrule 924.11(1) as follows:

**924.11(1)** Project applications shall be submitted to the ~~office of public transit~~ department.

ITEM 23. Amend paragraph **924.11(2)“c”** as follows:

c. Documentation of project ~~feasibility and costs~~ justification.

ITEM 24. Amend rule **761—924.15(324A)** as follows:

**761—924.15(324A) Review and approval.** Department staff shall review project applications ~~with an industry advisory committee~~ and shall submit recommendations to the transportation commission. The transportation commission is responsible for approving the projects to be funded.

ITEM 25. Amend rule **761—924.16(324A)** as follows:

**761—924.16(324A) Project agreement, and administration and ownership.**

**924.16(1)** and **924.16(2)** No change.

**924.16(3) Ownership.** The transit system must retain ownership of the new, renovated or repaired structure or facility for its useful life. If the structure or facility is transferred to a subcontracted entity or is sold before the useful life has expired, the transit system must repay the prorated state interest to the department.

ITEM 26. Amend **761—Chapter 924**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 8.57, ~~and 324A.1 and 2006 Iowa Acts, chapter 1179, section 55~~ 324A.6A.